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ARIZONA ATTORNEY GENERAL

Opinion No. 63-94-L

R-349

August 20, 1963

REQUESTED BY: M.J. "BUCK" BROWN
State Representative

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTION: Is there any local official or state agency who has jurisdiction or supervisory control over the mortgage companies in Arizona?

ANSWER: See body of opinion.

Having reviewed and perused the Arizona Constitution and the applicable provisions of the Arizona Revised Statutes, it is the opinion of this office that no local official or state agency has general supervisory control over mortgage companies per se in Arizona. Several state and political subdivision agencies and officials have a measure of jurisdiction over mortgage companies in related areas, but none have any general supervisory control or authority. Assuming for the purpose of argument that some state governmental agency or official has general supervisory control over mortgage companies per se, we are not aware of any statutory provisions by which such assumed supervisory controls can be guided.

Among the several state officials and agencies vested with some jurisdiction over mortgage companies, when such are incorporated, are the Governor and the Arizona Corporation Commission. A.R.S. § 41-101 (A) (6) provides:

"A. The Governor shall have the powers and perform the duties as prescribed in this article. The Governor: . . .

6. May require the attorney general, or any county attorney, to inquire into the affairs or management of any corporation doing

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business in this state."

The powers of the Corporation Commission with reference to mortgage companies relate generally to collection and remittance of fees and penalties, issuance of certificates of incorporation and the filing of annual reports. See A.R.S. § 10-101 et seq.

In Opinion No. 61-77 (November 10, 1961) this office advised the Arizona State Real Estate Department that a mortgage company, under the facts stated in the opinion, is acting for itself when it negotiates the loan and obtains the mortgage and, therefore, does not come within the statutory provisions regulating brokers. On July 23, 1963, this office advised the Superintendent of Banks that the State Banking Department has no jurisdiction or supervisory powers over mortgage companies and therefore no authority to conduct an investigation as to the cause of alleged fluctuation in impound funds received by mortgage companies.

On the political subdivision or local level, the county attorney is authorized by statute to institute proceedings and conduct, on behalf of the state, all prosecutions against persons charged with or reasonably suspected of public offenses when he has information that the offenses have been committed. See A.R.S. § 11-532. While there is no state agency having supervisory powers over mortgage companies, as such, any violation of the criminal statutes would be dealt with by said official.

Robert W. Pickrell
ROBERT W. PICKRELL
The Attorney General

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